

ST 99-16

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

"ABC MAIL ORDER COMPANY, INC.",

Taxpayer

No. 98-ST-0000

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. "Linda McCarthy", Asst. Tax Manager, for the taxpayer; Mr. Gary Stutland, Special Assistant Attorney General, for the Department of Revenue

Synopsis:

This matter comes on to be heard on a timely filed protest to a late-filing penalty in the amount of \$1,052 issued against the taxpayer on April 7, 1998. Following a request for abatement of the penalty due to reasonable cause, the Department of Revenue denied the request due to lack of "extenuating circumstances" by letter dated August 13, 1998, and this proceeding ensued. At issue is the central question of whether the taxpayer's failure to timely file requisite returns can be excused under the provisions of 35 ILCS 735/3-8. On the basis of the record presented, it is my recommendation the penalty be upheld.

Findings of Fact:

1. The department's prima facie case and all jurisdictional elements pertaining was established by the admission into evidence, without objection, of Notice of Assessment SA 0000000000000 and accompanying materials. (DOR Group Ex. No. 1)
2. Through documents submitted by the taxpayer and included within the department's exhibit, it was established that the amount due for the disallowed discount, late filing penalty and accrued interest through and inclusive of April 6, 1999 (the date of the hearing) was actually \$573.00 and not \$1,052, the amount stated on the face of the Notice of Assessment. (DOR Group Ex. No. 1; Testimony of J. Barborka, Revenue Auditor)
3. Taxpayer filed and remitted taxes for the period of January, 1997 through and inclusive of June, 1999 by way of returns filed on May 20, 1997, even though the return itself was labeled as being only for the period 1/97 through 4/97. (Testimony of J. Barborka, Revenue Auditor)
4. The return filed and taxes remitted were thus late for only the period of January, 1997 through March, 1997. The return filed and taxes remitted for the period of April, 1997 through and inclusive of June, 1999 were early and prepaid.
5. The taxpayer through its payment, remitted approximately \$34,000 to the department that was not yet due at the time it was paid. (DOR Group Ex. No. 1)

6. The Department introduced no evidence indicating that there were any other instances in which the taxpayer had filed late or had any present or former outstanding tax liabilities. Nor was any evidence introduced to indicate that the taxpayer had anything but an unblemished filing history outside of this single instance.
7. The reason the returns were filed late for the first three months of 1997 was due to the fact that the business was closing its books, having ceased doing business in April, 1996. Therefore, in order to tie up "loose ends", eliminate the possibility of another late filing error and avoid the responsibility of continuing to file monthly on outstanding credit receivables, a lump sum was paid up front. (Testimony of "Linda McCarthy")

Conclusions of Law:

The provisions of Section 3-8 of the Uniform Penalty and Interest Act ("UPIA") read as follows:

The penalties imposed under the provisions of Sections 3-3, 3-4 and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. 35 ILCS 735/3-8

Departmental regulations which implement this Act (86 Ill Admin. Code, ch. I, Section 700.400 et seq.) parallel the wording of the statute and provide that "a determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances." (Section 700.400(b). It is emphasized by these regulations, however, that the primary focus is to

be on the question whether the taxpayer exercised ordinary business care and prudence in the process of filing returns and the payment of taxes. (Section 700.440(c))

In evaluating the facts here presented, there remains no question that the returns for the first three months of 1997 were filed and paid on an untimely basis. For each of these three months, the taxpayer being a monthly filer, returns and remittances were due respectively on the 20th of the succeeding month. The area of direct inquiry then, is whether the failure to file timely occurred notwithstanding the exercise of ordinary business care and/or was due to circumstances over which the taxpayer had little or no control.

It is posed here that the department had the use of over \$34,000 in funds well before the taxes which those funds represented were due. Thus, it is argued, the time value of the money remitted early should more than make up for the penalty issued. However, such analysis avoids the real issue before me.

A penalty for a late payment is compensatory, i.e. to compensate the government, to some degree and upon a formula-based method, for the value of funds which it should have in its possession but doesn't. However, the penalty that we are dealing with in the present situation is not a late payment, but instead a late *filing* penalty.¹ In this case, a penalty imposed for late filing is entirely punitive in nature. In other words, its purpose is to directly penalize a taxpayer simply for failing to perform a duty imposed upon it.

The need to file returns on a timely basis is rooted in the absolute need of a taxing body to know the current status of a taxpayer in order to govern its own actions with

¹ The Notice of Assessment did not include any late payment penalty even though the payment for January through March, 1997 was late. Although there was no direct evidence as to why, I can assume through personal knowledge of department practices, that the penalty was eliminated because the payment was made prior to issuance of the notice.

respect to that taxpayer and to the implementation of fiscal programs in general. If returns are not filed when due, then the orderly mechanics of processing and maintaining information are disrupted. The department no longer has up-to-date information and its ability to make necessary decisions pertaining to receivables and other income issues is impaired. Thus the penalty which is imposed becomes the statutorily directed punishment given to taxpayers if they are remiss in their responsibilities. Unlike the late payment penalty, a late filing penalty is not designed to make the government whole.

When one recognizes the purpose for what penalty is enacted, then the fact this taxpayer prepaid its tax for the period between May, 1997 and June, 1999 becomes largely irrelevant. While it is fortuitous that it was paid in advance and certainly does constitute an unexpected benefit to the state, this does not overcome the fact that no reasonable cause for the failure to timely file the necessary returns has been set forth. It is again the failure to *file* which demands a reasonable excuse in order for any abatement to be applicable under the law.

The taxpayer here admits that the first three monthly returns for 1997 were a result of error on its part. In order to avoid a repetition of that error because the business was now closed, it elected to file all future returns and make all projected payments early. However, the reason for the error which caused the late filing in the first place has never been disclosed. Instead, the taxpayer attempts to assuage the Department by directing attention to the benefit it has been given through the early payments on the remaining months. While it is claimed that the taxpayer is being incongruously penalized for making a pre-payment², this is not the case at all.

² Testimony of "Linda McCarthy"

Unfortunately, in applying the test of the statutory language to the evidence of this case, I cannot piggy-back the fact that taxes were paid early in order to justify the filing of late returns. As already related, the purpose of the penalty that was imposed does not relate to any incidental enrichment that may have been enjoyed. Put in the simplest terms, a taxpayer cannot avoid the consequences of the commission of a wrong by the performance of an unrelated good deed. It is not a balance of equities which the UPIA requires. Instead it is the presence of a reasonable cause for failure to perform an act or duty mandated by law which justifies any abatement to be applied. Although on principal I can well sympathize with the position of the taxpayer, I nevertheless cannot suggest the penalty be removed when the record discloses no reasonable cause with respect to the omissions incurred.

On the basis of the above, it is recommended that the penalties imposed, as reduced in accord with the Department's primary exhibit, be upheld.

Respectfully submitted:

Richard L. Ryan
Administrative Law Judge 4/23/99